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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/700,968	07/11/2002	Christopher J Pratt	420115-56 LB13/SC18	9525

7590 12/12/2002  
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EXAMINER

VALENTI, ANDREA M

ART UNIT PAPER NUMBER

3643

DATE MAILED: 12/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application N .

09/700,968

Examiner

Andrea M. Valenti

Applicant(s)

PRATT, CHRISTHOPER J

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☒ Claim(s) 10 and 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

Claim 7 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim can not depend from another multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claim 7 has not been further treated on the merits.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent No. 4,236,351 to Smith.

Regarding Claim 1, Smith teaches a planting system for regulating the supply of water to a plant, the system has a liner (Smith #11) containing a volume of plant growing medium (Smith Fig.2 S); the liner is impermeable to water; the system further has a drainage means (Smith #18 and 19 Col. 3 lines 64-66) adapted to drain water from the plant growing medium contained within the liner and convey the drained water to a desired location; the liner serves to prevent drainage of water from the medium into the surrounding subsoil.

Regarding Claim 2, Smith discloses the liner is a plastic material (Smith Col. 3 lines 6-8).

Regarding Claim 3, Smith teaches the drainage means is a pipe (Smith #18 and 19).

Regarding Claim 4, Smith teaches the pipe is provided with perforations (Smith #21).

Regarding Claim 5, Smith teaches the section of the pipe located within the liner is surrounded by a particulate material (Smith Fig. 2 C and S).

Regarding Claim 6, Smith inherently teaches that the particulate material is gravel since the substrate will inherently contain small rock particles and the rock particles are an old and well-known means of providing proper drainage and aeration for soil and plant root systems.

Claims 1-3 and 8-9 are rejected under 35 U.S.C. 102(b) as being anticipated by PCT WO 89/4600 to Andersson.

Regarding Claim 1, Andersson teaches a planting system for regulating the supply of water to a plant, the system has a liner (Andersson #1) containing a volume of plant growing medium (Andersson Fig.1 and 2); the liner is impermeable to water; the system further has a drainage means (Andersson #4 and 6) adapted to drain water from the plant growing medium contained within the liner and convey the drained water to a desired location; the liner serves to prevent drainage of water from the medium into the surrounding subsoil.

Regarding Claim 2, Andersson discloses the liner is a plastic material (Andersson page 7 line 34).

Regarding Claim 3, Andersson teaches the drainage means is a pipe (Andersson #6 and #11).

Regarding Claim 8, Andersson teaches a paving system that has at least a surface layer (Andersson Fig. 1 #9) provided with an island in the form of a hole or trench for receipt of a plant, in combination with a planting system as claimed in claim 1.

Regarding Claim 9, Andersson teaches the surface layer is impervious to water (Andersson page 1 line 14).

Claims 1-6 and 8-9 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,920,694 to Higa.

Regarding Claim 1, Higa teaches a planting system for regulating the supply of water to a plant, the system has a liner (Higa #2) containing a volume of plant growing medium (Higa Fig.1(a)); the liner is impermeable to water (Higa Col. 3 line 22); the system further has a drainage means (Higa Fig. 4(a) arrows) adapted to drain water from the plant growing medium contained within the liner and convey the drained water to a desired location; the liner serves to prevent drainage of water from the medium into the surrounding subsoil.

Regarding Claim 2, Higa discloses the liner is a plastic material (Higa Col. 3 line 22).

Regarding Claim 3, Higa teaches the drainage means is a pipe (Higa Fig. 4(a) #3).

Regarding Claim 4, Higa teaches the pipe is provided with perforations (Higa Fig. 4(a) #6).

Regarding Claim 5, Higa teaches the section of the pipe located within the liner is surrounded by a particulate material (Higa Fig. 3).

Regarding Claim 6, Higa inherently teaches that the particulate material is gravel since the substrate will inherently contain small rock particles and the rock particles are an old and well-known means of providing proper drainage and aeration for soil and plant root systems.

Regarding Claim 8, Higa teaches a paving system that has at least a surface layer (Higa #1) provided with an island in the form of a hole or trench for receipt of a plant, in combination with a planting system as claimed in claim 1.

Regarding Claim 9, Higa teaches the surface layer is impervious to water (Higa Col. 3 line 22).

#### ***Allowable Subject Matter***

Claims 10 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

European Patent EPO 00552722A1; German Patent DE003633390A1; German Patent DE003821605A1; U.S. Patent No. 5,099,603; U.S. Patent No. 5,363,592; United

Art Unit: 3643

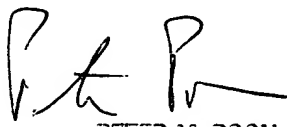
Kingdom Patent GB 2227775A; U.S. Patent No. 1,906,494; U.S. Patent 5,878,528; U.S. Patent 3,005,287; United Kingdom Patent GB 2108549A; and U.S. Patent No. 5,064,308.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703-306-4195 for regular communications and 703-305-0285 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-4357.

AMV  
December 5, 2002

  
PETER M. POON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600